IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1121 OF 2003

The State of Maharashtra ...Appellant

V/s.

Hanmant Kisan Patole & Ors. ...Respondents

Mr.Y.M. Nakhawa APP for State/Appellant.
Mr.Shrikant Yadav I/b. Dilip Bodke for Respondent No.1, 2 & 5.

CORAM : V.M. KANADE, J.

DATED : 13th AUGUST, 2007.

P.C:-

1. Heard learned APP for the State and learned counsel for Respondent No.1, 2, & 5.

2. The State has filed appeal against impugned order passed by the Judicial Magistrate, First Class, Vaduj, dated 28/04/2003 whereby Accused No.1 to 4 were acquitted for the offences punishable U/s.457, 380 r/w 34 of IPC and Accused No.5 and 6 were acquitted for the offences punishable U/s.411 of IPC.

3. Prosecution case in brief is that complainant heard sound of her sister-in-law and, therefore, she woke up and went to the new house and thereafter, she switched on the lights and noticed that door of the old house was open. When she went inside and switched on the lights, she saw that Godrej Cupboard was open and its articles were scattered and on closure scrutiny, she found that certain gold articles were missing. Complainant lodged complaint on 08/07/2000. Statements of witnesses were recorded. Police arrested three accused who gave voluntary statements and agreed to disclose place where they had sold gold articles. Accordingly, panchanama was made. Gold articles were recovered.

4. Learned APP has taken exception to the order and judgment passed by the Trial Court. It is an admitted position that the complainant has made number of improvements in her evidence. She did not state before the police that she had seen the accused. Further in her evidence she has stated that light was on in her house and that she had seen the one of the accused while snatching a chain

from the neck of Ratnabai. In the cross examination, also she had admitted that she did not have any receipt of stolen articles and that she had no personal knowledge of theft.

5. However, the Trial Court has disbelieved panch witness in view of admission which has been given by him that he is habitual panch of police and that he was called in police station and that he had signed the panchanama in the police station. Further, the Trial Court has observed that there is discrepancy regarding time of panchanama. Benefit of doubt is given to the accused. I do not see any infirmity in the order passed by the Trial Court. On perusal of grounds of appeal, it indicates that findings of the Trial Court are not challenged on the ground of contradictions and improvements which are made. There is no reason to interfere with the impugned order. Leave is refused. Appeal is dismissed.

V.M. KANADE, J.